

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRD DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 24483 of 2004

Between:

1 B. Krishna Murthy, S/o. Late Suraiah,
Special Court under A.P. Land Grabbing (Proh) Act,

B.R.K.R.Government Offices Complex, Hyderabad.

2 J. Krishna Murti, S/o. Narasimham
R/o. Padmarao Nagar, Secunderabad.

..... PETITIONERS

AND

1 The State of A.P., rep. by its Principal Secretary, Revenue
(A&R) Dept., Secretariat, 'Hyderabad.

2 The Registrar, Special Court under A.P. Land Grabbing (Prob)
Act, II Floor, BRKR Govt Offices Complex, Tankbund Road,
Hyderabad.

3 The Principal Secretary Govt., State of A.P., Finance
Department, Secretariat, Hyderabad.

4 The Pay and Accounts Officer, Insurance Buildings, Abids,

Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ or order or direction more particularly one in the nature of Writ of Mandamus (1) declaring the action of the respondents herein in not extending the benefit of house rent allowance @ 30% of pay to the petitioners as judicial Members of the Special Court under A.P. Land Grabbing (Prohibition) Act, at par with the Members of the A.P. Administrative Tribunal as granted by the 1st respondent by issuance of G.O.Ms.No.199 dt. 24.4.2002 as arbitrary, illegal offending Article 14 of the Constitution of India. (2) declaring that the petitioners are entitled to house rent allowance at par with the members of the A.P. Administrative Tribunal, Hyderabad, (3) issue a consequential direction to the respondents to take all such steps for effecting payment HRA @ 30% of their pay, w.e.f. from the dates of their assumption of office as granted to the members of the A.P. Administrative Tribunal vide G.O.Ms.No.199 dt. 24.4.2002, if necessary by amending rule 12 (2) of G.O.Ms.No.176 dt. 13.02.1996 accordingly and release the consequential benefits to the petitioners upon such fixation of HRA.

Counsel for the Petitioner: MR.D.V.SITARAMAMURTHY

Counsel for the Respondent No.1 : GP FOR SERVICES II FOR R-1

Counsel for Respondent No.2 : Mr.A.V.SESHA SAI

The Court made the following :

ORDER: (per P.S. Narayana.,J)

Heard Sri D.V. Sitharam Murthy, Counsel for writ petitioners, Government Pleader for Services-II and Sri A.V. Sesha Sai, Counsel representing the respondents.

2. The writ petitioners, Judicial Members of the Special Court under A.P. Land Grabbing (Prohibition) Act, in short hereinafter referred to as "Act" for the purpose of convenience, filed the present Writ Petition praying for an appropriate writ or order or direction more particularly one in the nature of writ of mandamus declaring the action of the respondents in not extending the benefit of House Rent Allowance @ 30% of pay to the petitioners as Judicial Members of the Special Court under A.P. Land Grabbing (Prohibition) Act at par with the Members of the A.P. Administrative Tribunal as granted by the 1st respondent by issuance of G.O.Ms.No.199, dated 24-4-2002 as arbitrary, illegal, offending Article 14 of the Constitution of India declaring that the petitioners are entitled to House Rent Allowance at par with the Members of the A.P. Administrative Tribunal, Hyderabad and to issue a consequential direction to the respondents to take all such steps for effecting payment of House Rent Allowance @ 30% of their pay with effect from the dates of their assumption of office as granted to the Members of A.P. Administrative Tribunal in G.O.Ms.No.199, dated 24-4-2002, if necessary by amending Rule 12(2) of the Conditions of Service Rules for Chairman and Members of the Special Court under Andhra Pradesh Land Grabbing

(Prohibition) Act, in short referred to as “Rules” hereinafter, issued in G.O.Ms.No.176, dated 13-2-1996 and accordingly release the consequential benefits to the petitioners upon such fixation of House Rent Allowance and to pass such other suitable orders.

3. Sri D.V. Sitharam Murthy, the learned Counsel representing the writ petitioners would contend that the action of the 1st respondent in not redressing the continuing disparity in the amount of House Rent Allowance payable to the petitioners and to bring it at par with the House Rent Allowance payable to the Members of the A.P. Administrative Tribunal in accordance with G.O.Ms.No.199, dated 24-4-2002 is contrary to the Judgment of this Court in W.P.No.191/2003 dated 6-11-2003. The learned Counsel also would contend that the 1st respondent is totally unjustified in not fixing the House Rent Allowance @ 30% of the Pay payable to the petitioners and the same is discriminatory and arbitrary offending Article 14 of the Constitution of India since similarly placed persons appointed to the A.P. Administrative Tribunal, Hyderabad with whom parity in service conditions is statutorily ordained under Rule 3 of the Rules. The Counsel also would contend that the impugned action of the 1st respondent would tantamount to creating a separate class from out of similarly placed persons, the writ petitioners, and the Members of the A.P. Administrative Tribunal for the purposes as ordained under Rule 3 of the Rules. The Counsel also had pointed out that the petitioners

and the Members of the A.P. Administrative Tribunal cannot be treated as two separate classes for the purpose of House Rent Allowance and the entitlement thereof inclusive of the quantum of House Rent Allowance. Since both the classes perform similar functions and statutorily ordained, continuing House Rent Allowance @ only 15% to the writ petitioners is clearly against Rules and also arbitrary and discriminatory being violative of Article 14 of the Constitution of India.

4. The learned Government Pleader for Services-II had taken this Court through the counter affidavit filed on behalf of the 1st respondent and would maintain that it is true that Rule 12(2) of the statutory Rules framed in G.O.Ms.No.176 provides for payment of House Rent Allowance to the Members of the Special Court under the Act. The House Rent Allowance relating to the Members of the A.P. Administrative Tribunal had been enhanced to 30% through G.O.Ms.No.199 dated 24-4-2002 by of an Amendment to Rule 12 of A.P. Administrative Tribunal (Salaries and Allowances and Conditions of Services of Chairman, Vice-Chairman and Members) Rules, 1989. The learned Counsel also would submit that the Officers in State Government who are in corresponding pay scale are drawing 15% House Rent Allowance only and hence the writ petitioners are not entitled for enhancement of House Rent Allowance to 30%. The learned Counsel further would maintain that even otherwise unless

Rule 12(2) of the Rules is suitable amended, the writ petitioners are not entitled to the relief prayed for.

5. The learned Counsel representing the 2nd respondent had taken this Court through the counter affidavit filed and would point out the prior Writ Petitions filed in this regard and the directions issued by this Court. The Counsel also would maintain that the writ petitioners and similarly placed Judicial Officers of these Courts are being driven to Courts repeatedly despite the directions which are being issued from time to time by this Court.

6. Heard the Counsel on record.

7. The 1st petitioner worked as District & Sessions Judge from July 1991 to 31-3-1998 and then he was appointed as Judicial Member, Special Court under the Act for a period of two years from the date of assumption of the charge by orders issued in G.O.Ms.No.345, Revenue (A&R) Department dated 26-5-2001 and had assumed charge on the forenoon of 1-6-2001 and his pay as Judicial Member of the Court was regulated as per orders issued in G.O.Ms.No.629, Revenue (A&R) Department dated 12-8-1999 and proceedings dated 14-6-2001 and the pay of the 1st writ petitioner was fixed in the scale of Rs.22,400-600-26,000 and subsequent thereto by proceedings dated 10-7-2002 his pay was revised as per the orders in G.O.Ms.No.207, Revenue (A&R) Department dated 20-4-2002 at

Rs.22,400/- minus pension Rs.6525/- in addition to the pay of Rs.15,875/-. It is stated that the 1st writ petitioner also is entitled to draw D.A. and House Rent Allowance @ 30% as per G.O.Ms.No.199, General Administration (SPF-B) Department dated 24-4-2002 and C.C.A. on Rs.22,400/- at par with the Members of A.P. Administrative Tribunal, Hyderabad as the writ petitioner is continuing as a Judicial Member as of date. It was further averred that the 1st writ petitioner's arrears bill of House Rent Allowance @ 30% from 1-6-2001 was prepared and sent to the Pay and Accounts Officer, but the same was returned on the ground that Rule 12(2) of the Rules had not been amended. It is stated that even after returning his House Rent Allowance arrears bill Sri A.Venku Reddy, Judicial Member was paid House Rent Allowance @ 30% till 23-12-2002.

8. Likewise, the 2nd writ petitioner served as District & Sessions Judge from 1984 to 2002 and was appointed as Judicial Member of the Special Court through G.O.Rt.No.2205 Revenue (A&R) Department dated 23-12-2002 and he assumed charge on 26-12-2002 afternoon and he also is continuing as a Judicial Member as on this date. The conditions of service relating to Chairman and Members of the Special Court under the Act are governed by the Rules framed by the 1st respondent by virtue of rule making power under Section 16 of the Act in G.O.Ms.No.176 dated 13-2-1996. Rule

3 of the said Rules mandates that the pay of the Members of the Special Court would be in parity with the pay drawn by the Members of the A.P. Administrative Tribunal. When the pay of the Members of the Special Court had been found to be lower than the pay of the Members of the A.P. Administrative Tribunal, the same had been remedied by the 1st respondent in the light of the directions in W.P.No.3281/2002 dated 25-4-2002. Likewise, when the Pension of the Members of the Special Court was not revised at par with the Members of the A.P. Administrative Tribunal, this Court again intervened and by Judgment dated 6-12-2003 in W.P.No.191/2003 dated 6-12-2003 it was declared that these Members are entitled to pension at par with the Members of the A.P. Administrative Tribunal. The Judicial Members of the Special Court had not been granted the facility of deduction of only Rs.1500/- from the present Pension as granted to the Revenue Members instead of the entire amount of Pension. W.P.No.16172/2004 was filed praying for parity in regard to such facility at par with the Revenue Members of the Special Court and the same was disposed of with suitable directions.

9. The amended Rule 3 of the Rules dealing with Pay reads as hereunder :

“The Chairman shall receive a Pay of Rs.26,000/- plus Special Pay of Rs.1,000/- per mensem and a Member shall receive Pay in the scale of Rs.22,400-600-26,000/- or such scales of

pay as are applicable to the Chairman and Members of the Andhra Pradesh Administrative Tribunal as amended from time to time.

Provided that in the case of an appointment as Chairman or as the case may be a Member of a person who has retired as a Judge of a High Court or who has retired from service under the Central Government or a State Government and who is in receipt of or has received or has become entitled to receive any retirement benefits by way of pension and/or gratuity, or other forms of retirement benefits, the aforementioned pay shall be reduced by the gross amount of pension and pension equivalent of gratuity or any other form of retirement benefits, if any, drawn or to be drawn by him”.

Rule 12 of the Rules dealing with Accommodation reads as hereunder :

(1)(a) The Chairman shall be entitled for accommodation on par with the serving Judge of High Court of Andhra Pradesh.

- b. A Member of the Special Court shall be entitled to the use of official residence of appropriate type subject to availability on the payment of licence fee at the rates prescribed by Government from time to time.

(2) When the Chairman or a Member is not provided with or does not avail himself of the official residence referred to in sub-rule (1), he may be paid an allowance of an amount equal to twenty percent of his pay or such rates as are applicable to the High Court Judges or officers of the corresponding status in the Government respectively.

(3) Where the Chairman or a Member occupies an official residence beyond the permissible period he shall be liable to pay additional licence fee or penal rent, as the case may be, and liable to eviction in accordance with the rules of the Government.

Rule 12(2) referred to supra specifies that if the Chairman or a

Member is not provided with or does not avail himself of the official residence referred to in sub-rule (1), he may be paid an allowance of an amount equal to 20% of his pay or such rates as are applicable to the High Court Judges or officers of the corresponding status in the Government respectively. In the counter affidavit filed by the 2nd respondent, it was stated that several recommendations had been made in this regard. In the counter affidavit filed by the 1st respondent it was stated that the services of the Chairman and Members of the Special Court under the Act are framed in G.O.Ms.No.176, Revenue (A&R) Department dated 13-2-1996 and as per Rule 12(2) of the Rules made thereunder, the Chairman and Members of the Special Court under the Act are entitled to draw House Rent Allowance @ 20%. As far as the Members of A.P. Administrative Tribunal are concerned, the Government had issued G.O.Ms.No.199, General Administration, dated 24-4-2002 wherein House Rent Allowance to those Members had been enhanced from 15% to 30%. Hence, unless Rule 12(2) of the Rules is suitably amended, the writ petitioners are not entitled to the relief prayed for. Further, it is stated that the proposals had been sent in this regard and the said proposals are under consideration of the Government. Further, specific stand was taken that the officers in State Government who are in the corresponding pay scale are drawing 15% House Rent Allowance only and hence the writ petitioners are not entitled to

enhancement of House Rent Allowance to 30%.

10. It may be true that in G.O.Ms.No.199, General Administration (SPF.B) Department, dated 24-4-2002, the Government had amended Rule 12 of the A.P. Administrative Tribunal (Salaries and Allowances and Conditions of Service of Chairman, Vice-Chairman and Members) Rules, 1989 and enhanced the House Rent Allowance from 15% to 30% to the Members of A.P. Administrative Tribunal. On a careful reading of Rule 3 and Rule 12 of the Rules referred to supra and the directions issued by this Court from time to time in W.P.No.3281/2002, W.P.No.191/2003 and W.P.No.16172/2004, it is clear that the writ petitioners are entitled to the same benefits inclusive of the House Rent Allowance to which the Members of the A.P. Administrative Tribunal would be entitled to. It is pertinent to note that the writ petitioners are similarly placed persons and in the light of Rule 3 of the Rules parity in service conditions may have to be maintained inclusive of the Pay and Allowances and other benefits on par with the Members of the A.P. Administrative Tribunal. As can be seen from the material available on record, the writ petitioners made several representations and the 2nd respondent also had addressed the Government in this regard, but despite the same except stating that the proposals are under active consideration, no further action had been taken in this regard. While dealing with the aspect of equal Pension to the members of

Special Court under the Act as allowed to the Members of the A.P. Administrative Tribunal, a Division Bench of this Court to which one of us (G.Bikshapathy.,J) was a party in **T.CHANDRASEKHAR REDDY**

Vs. STATE OF ANDHRA PRADESH at para-18 held :

“There is no dispute that the pay as applicable to the Chairman and Members of the A.P. Administrative Tribunal are made applicable mutatis mutandis to the Chairman and the Members of the Special Court and the Rules are identical except in case of A.P. Administrative Tribunal the Central Government is the appropriate authority while in case of Special Court, the State Government is the appropriate authority. Even the said rules are identically framed in respect of the Members of the Special Court constituted by the Government of Andhra Pradesh under Indian Electricity Act under the provisions of the Indian Electricity Act (Amendment Act) 2000 (A.P.Act 2 of 2000). The pay and other benefits are on par with that of the Chairman and the Members of the A.P. Administrative Tribunal. Though Rule 8(3) and (8) cover the Pay and Pension respectively of the Chairman and Members of the Special Court, we are only concerned in this Writ Petition the pension of the Members of the Special Court. Therefore, when the pay has been increased and revised scales are made applicable, the pension also is liable to be increased. The Chairman and Members of the Special Court are treated on par with the Chairman and Members of the A.P. Administrative Tribunal in matter of pay and other benefits. This is manifest from Rule 3 also. In such a situation, they cannot be meted out with unequal treatment in matter of pension attracting the wrath of Article 14 of the Constitution of India. The pension follows pay and it is always correlated to pay. The pension is now no more a bounty or gratuitous pay, and it is a statutory right of the employee to claim pension in accordance with rules. Therefore, when the minimum pension was increased to Rs.1,450/- per annum to Rs.4,716/- per annum in respect of the Members of the A.P. Administrative Tribunal, after the enhancement of the pay scales of Rs.22,400-600-26,000 and when the same pay scales were made applicable to the members of the Special Court, there is no reason why the pension as fixed to Members of A.P. Administrative Tribunal should not be made applicable in respect of the members of the Special Court. There is no discernible criteria for discriminating the Members of the Special Court while the

Members of A.P. Administrative Tribunal who is drawing the Pay scale of Rs.22,000-600-26,000 is allowed to draw minimum pension of Rs.4,716/-. Therefore, it is but necessary that the same pension should be allowed to be drawn by the Member of a Special Court who is drawing same pay scale referred to above. The members of these Tribunals having been treated equally in matters of service conditions cannot be discriminated converting the equals into unequals. The Government while enhancing the pay scales of Members of Special Court, ought to have simultaneously amended the provision relating to pension. Obviously there appears to be an omission in this regard. But that should not result in arbitrary and discriminatory treatment to the Members who are treated on par with the Members of A.P. Administrative Tribunal for all purposes.”

11. It is also true that the Judicial Members working in Special Court under the Act are being driven to this Court repeatedly for every benefit in the light of the stand that is being taken by the Government that unless the Rules are suitably amended, though similarly placed had been given such benefits, these persons are not entitled to such benefits. It is needless to say that the Government is at liberty to suitably amend the Rules and in fact in the light of the language employed in the Rules referred to supra, the Government may have to suitably amend Rule 12(2) of the Rules also to be in accordance with Rule 3 of the Rules and also to maintain the parity of scales and also all other benefits on par with the Members of the A.P. Administrative Tribunal. This treatment which is being given to the writ petitioners by the Government when compared to similarly placed persons of the A.P. Administrative Tribunal definitely would be discriminatory and also arbitrary and hence the same is in violation of

Article 14 of the Constitution of India. Hence, it is needless to say that the writ petitioners also are entitled to House Rent Allowance @ 30% on par with the Members of the A.P. Administrative Tribunal, Hyderabad. In the light of the foregoing discussion, the Writ Petition is hereby allowed. No order as to costs.

Justice G.Bikshapathy

Justice P.S. Narayana

Date : -3-2005

L.R. copy to be marked : YES / NO

AM

Rule Nisi has been made absolute.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Third day of March Two Thousand and Five.

ASSISTANT REGISTRAR

To:

One fair copy to Hon'ble Sri Justice G.Bikshapathy (for his Lordship's kind perusal)

One fair copy to Hon'ble Sri Justice P.S. Narayana (for his Lordship's kind perusal)

1 Principal Secretary, Revenue

(A&R) Dept., Secretariat, State of A.P. Hyderabad.

2 The Registrar, Special Court under A.P. Land Grabbing

(Prohibition) Act, II Floor, BRKR Govt Offices Complex,
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Hyderabad.

3 The Principal Secretary Govt., State of A.P., Finance

Department, Secretariat, Hyderabad.

4 The Pay and Accounts Officer, Insurance Buildings, Abids,

Hyderabad.

**5. 2 C.Cs. to Government Pleader for Services-II,
High Court of Andhra Pradesh,
Hyderabad.**

6. 8 L.R. copies

7. The Under Secretary, Union of India, Ministry of Law, Justice
and Company Affairs, New Delhi.

8. The Secretary, A.P. Advocates Association Library, High court
Buildings, Hyderabad.

9. Two C.D. copies

10) 1 CC to MR.SESHA SAI

11) 1 CC to MR.SITARAMAMURTHY

